

REFERENCE TITLE: homicide interrogations; electronic recording

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2315

Introduced by
Representatives Sinema: Ableser, Campbell CH, Gallardo, Lopes, Meza,
Miranda B, Prezelski

AN ACT

AMENDING SECTION 13-3988, ARIZONA REVISED STATUTES; AMENDING TITLE 13,
CHAPTER 38, ARTICLE 13, ARIZONA REVISED STATUTES, BY ADDING SECTION
13-3988.01; RELATING TO TRIALS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 13-3988, Arizona Revised Statutes, is amended to
3 read:

4 13-3988. Admissibility of confessions: definition

5 A. EXCEPT AS PROVIDED IN SECTION 13-3988.01, in any criminal
6 prosecution brought by the state, a confession shall be admissible in
7 evidence if it is voluntarily given. Before ~~sueh~~ THE confession is received
8 in evidence, the trial judge ~~shall~~, out of the presence of the jury, SHALL
9 determine any issue as to voluntariness. If the trial judge determines that
10 the confession was voluntarily made, it shall be admitted in evidence and the
11 trial judge shall permit the jury to hear relevant evidence on the issue of
12 voluntariness and shall instruct the jury to give such weight to the
13 confession as the jury feels it deserves under all the circumstances.

14 B. The trial judge in determining the issue of voluntariness shall
15 take into consideration all the circumstances surrounding the giving of the
16 confession, including but not limited to the following:

17 1. The time elapsing between arrest and arraignment of the defendant
18 making the confession, if it was made after arrest and before arraignment.

19 2. Whether ~~sueh~~ THE defendant knew the nature of the offense with
20 which he was charged or of which he was suspected at the time of making the
21 confession.

22 3. Whether or not ~~sueh~~ THE defendant was advised or knew that he was
23 not required to make any statement and that any ~~sueh~~ statement could be used
24 against him.

25 4. Whether or not ~~sueh~~ THE defendant had been advised ~~prior to~~ BEFORE
26 questioning of his right to the assistance of counsel.

27 5. Whether or not ~~sueh~~ THE defendant was without the assistance of
28 counsel when questioned and when giving ~~sueh~~ THE confession.

29 C. The presence or absence of any of the factors indicated in
30 SUBSECTION B, paragraphs 1 through 5 of this ~~subsection which~~ SECTION THAT
31 are taken into consideration by the judge need not be conclusive on the issue
32 of voluntariness of the confession.

33 E. D. Nothing contained in this section shall bar the admission in
34 evidence of any confession made or given voluntarily by any person to any
35 other person without interrogation by anyone, or at any time at which the
36 person who made or gave ~~sueh~~ THE confession was not under arrest or other
37 detention.

38 E. As used in FOR THE PURPOSES OF this section, ~~the term~~ "confession"
39 means any confession of guilt of any criminal offense or any
40 self-incriminating statement made or given orally or in writing.

1 Sec. 2. Title 13, chapter 38, article 13, Arizona Revised Statutes, is
2 amended by adding section 13-3988.01, to read:

3 13-3988.01. Custodial interrogations in homicide investigations; electronic recording; definitions

4 A. AN ORAL, WRITTEN OR SIGN LANGUAGE STATEMENT THAT IS MADE BY AN
5 ACCUSED DURING ANY CUSTODIAL INTERROGATION AT A LAW ENFORCEMENT AGENCY OR
6 OTHER PLACE OF DETENTION IN ANY HOMICIDE INVESTIGATION SHALL BE
7 ELECTRONICALLY RECORDED IN ITS ENTIRETY.

8 B. THIS SECTION DOES NOT APPLY TO A STATEMENT THAT IS ANY OF THE
9 FOLLOWING:

10 1. MADE BY THE ACCUSED IN OPEN COURT, BEFORE A GRAND JURY OR AT A
11 PRELIMINARY HEARING.

12 2. SPONTANEOUS AND NOT MADE IN RESPONSE TO A QUESTION.

13 3. MADE AFTER QUESTIONING THAT IS ROUTINELY ASKED DURING THE
14 PROCESSING OF A SUSPECT.

15 4. MADE DURING A CUSTODIAL INTERROGATION THAT WAS CONDUCTED
16 OUT-OF-STATE.

17 5. OBTAINED BY A FEDERAL LAW ENFORCEMENT OFFICER IN A FEDERAL PLACE OF
18 DETENTION.

19 6. GIVEN AT A TIME WHEN THE INTERROGATORS WERE UNAWARE THAT A DEATH
20 HAD IN FACT OCCURRED.

21 7. OTHERWISE INADMISSIBLE UNDER THIS SECTION BUT THAT IS USED ONLY FOR
22 IMPEACHMENT AND NOT AS SUBSTANTIVE EVIDENCE.

23 C. ANY STATEMENT THAT IS MADE BY AN ACCUSED AND THAT IS ELECTRONICALLY
24 RECORDED PURSUANT TO THIS SECTION IS CONFIDENTIAL.

25 D. THE STATE SHALL PRESERVE ANY ELECTRONIC RECORDING THAT IS MADE OF A
26 CUSTODIAL INTERROGATION UNTIL THE DEFENDANT'S CONVICTION FOR ANY OFFENSE
27 RELATING TO THE STATEMENT IS FINAL AND ALL DIRECT AND HABEAS CORPUS APPEALS
28 ARE EXHAUSTED OR THE PROSECUTION OF THE OFFENSE OR OFFENSES IS BARRED BY LAW.

29 E. FOR THE PURPOSES OF THIS SECTION:

30 1. "CUSTODIAL INTERROGATION" MEANS ANY INTERROGATION TO WHICH BOTH OF
31 THE FOLLOWING APPLY:

32 (a) A REASONABLE PERSON IN THE SUBJECT'S POSITION WOULD CONSIDER
33 HIMSELF TO BE IN CUSTODY.

34 (b) A QUESTION IS ASKED THAT IS REASONABLY LIKELY TO ELICIT AN
35 INCRIMINATING RESPONSE.

36 2. "ELECTRONIC RECORDING" INCLUDES A MOTION PICTURE, AUDIOTAPE,
37 VIDEOTAPE OR DIGITAL RECORDING.

38 3. "PLACE OF DETENTION" MEANS A POLICE STATION, CORRECTIONAL FACILITY,
39 HOLDING FACILITY FOR PRISONERS OR OTHER GOVERNMENT FACILITY WHERE PERSONS ARE
40 HELD IN DETENTION IN CONNECTION WITH CRIMINAL CHARGES THAT HAVE BEEN OR MAY
41 BE FILED AGAINST THEM. PLACE OF DETENTION DOES NOT INCLUDE A COURTHOUSE.